136

No. 09-42

Supreme Court, U.S.
FILED
AUG 10 2009
OFFICE OF THE CLERK

In The

Supreme Court of the United States

HUGH T. BUTLER, SR.,

Petitioner,

v.

GREIF, INC.,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

RESPONDENT'S BRIEF IN OPPOSITION

BENJAMIN H. BANTA
Counsel of Record
THE KULLMAN FIRM, P.L.C.
1100 Poydras Street, Suite 1600
New Orleans, LA 70163
Telephone: (504) 524-4162
Facsimile: (504) 596-4189

Counsel for the Respondent

COCKLE LAW BRIEF PRINTING CO (800) 225-6964
OR CALL COLLECT (402) 342-2831

COUNTER STATEMENT OF QUESTION PRESENTED

Whether the U.S. Court of Appeals for the Eleventh Circuit correctly affirmed summary judgment to the Respondent, Greif, Inc., because the Petitioner, Hugh T. Butler, Sr., failed to submit a verified charge of discrimination – which is required by statute – to the U.S. Equal Employment Opportunity Commission before the Commission dismissed Butler's non-verified charge and closed its investigation.

PARTIES TO PROCEEDING BELOW AND CORPORATE DISCLOSURE STATEMENT

In addition to the two parties named in the caption, Michael Ogilvie, Jr. was identified as a party – an Appellee – in the proceeding below (in the U.S. Court of Appeals for the Eleventh Circuit). However, Ogilvie's dismissal from this action was neither contested at the U.S. District Court level (where Ogilvie was a Defendant) nor appealed to the Eleventh Circuit; so he is no longer a party to this action.

The Respondent, Greif, Inc. (stock ticker symbol "GEF"), does not have a parent corporation. No publicly held company owns 10% or more of either the voting stock or, to the best of the corporation's knowledge, the non-voting stock of Greif, Inc.

TABLE OF CONTENTS

	Page
COUNTER STATEMENT OF QUESTION PRESENTED	i
PARTIES TO PROCEEDING BELOW AND CORPORATE DISCLOSURE STATEMENT	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
OPINIONS AND ORDERS BELOW	1
STATEMENT OF JURISDICTION	1
STATUTES AND REGULATIONS AT ISSUE	1
STATEMENT OF THE CASE	4
ARGUMENT	6
I. EEOC Charge Must Be Verified	6
II. Butler's EEOC Charge Not Verified	7
III. Butler's Belated Verification Fails	7
A. Case Law Supports Greif	8
B. No Circuit Split	12
C. Butler Not Being Denied 'Day in Court'	15
D. No Important Question of Federal Law	17
CONCLUSION	17

TABLE OF AUTHORITIES

Page

CASES

Bacon v. Allstate Ins. Co., No. 93 C 1701, 1995 WL 360736 (N.D. Ill. June 14, 1995) 8

Balazs v. Liebenthal, 32 F.3d 151 (4th Cir. 1994) 8, 9, 11, 12

Buck v. Hampton Township Sch. Dist., 452 F.3d 256 (3d Cir. 2006) 12, 14

Choate v. Caterpillar Tractor Co., 402 F.2d 357 (7th Cir. 1968) 12, 13

Danley v. Book-of-the-Month Club, Inc., 921 F. Supp. 1352 (M.D. Pa. 1996) 8, 14

Edelman v. Lynchburg College, 535 U.S. 106 (2002) 8, 11

Hazeur v. Federal Warranty Serv. Corp., No. Civ.A. 99-3156, 2000 WL 365013 (E.D. La. Apr. 7, 2000) 8

McWilliams v. Latah Sanitation, Inc., No. 04-35387, 149 Fed. Appx. 588 (9th Cir. 2005) 12, 13

Reynolds v. Solectron Global Servs., 358 F. Supp. 2d 688 (W.D. Tenn. 2005) 8

Wiman v. Fallon County, Docket No. DV 2004-08, 2006 Mont. Dist. LEXIS 974 (Mont. Dist. Ct. June 22, 2006) 13

TABLE OF AUTHORITIES – Continued

Page

STATUTES

28 U.S.C. § 1254(1) 1

42 U.S.C. § 2000e *et seq.* 6

42 U.S.C. § 2000e-5(b) 1, 7

42 U.S.C. § 2000e-5(e)(1) 1, 6

42 U.S.C. § 12117(a) 1, 2, 6

42 U.S.C. § 12203 5

REGULATIONS

29 C.F.R. § 1601.7(a) 1, 2

29 C.F.R. § 1601.9 ..... 1, 7

29 C.F.R. § 1601.12(b) 1, 9, 12

29 C.F.R. § 1601.14(a) 1, 2, 3

OTHER AUTHORITIES

Federal Rule of Appellate Procedure 32.1 13

Supreme Court Rule 13.1 1

OPINIONS AND ORDERS BELOW

For the Opinion by the U.S. Court of Appeals for the Eleventh Circuit, *see* 2009 U.S. App. LEXIS 7734 (11th Cir. Apr. 8, 2009). As for the Order by the U.S. District Court for the Northern District of Georgia (Case No. 1:07-cv-01978-ODE, Doc. #25, filed 09/26/2008), it is not reported but is set forth on pages 5-18 of the Petitioner's Appendix.

STATEMENT OF JURISDICTION

This Court has jurisdiction over the petition for a writ of certiorari pursuant to 28 U.S.C. § 1254(1). The Opinion by the U.S. Court of Appeals for the Eleventh Circuit was issued on April 8, 2009, and the petition for a writ of certiorari was filed with this Court 90 days later, on July 7, 2009. Thus, the petition is timely pursuant to Supreme Court Rule 13.1.

STATUTES AND REGULATIONS AT ISSUE

42 U.S.C. § 2000e-5(b)
42 U.S.C. § 2000e-5(e)(1)
42 U.S.C. § 12117(a)
29 C.F.R. § 1601.7(a)
29 C.F.R. § 1601.9
29 C.F.R. § 1601.12(b)
29 C.F.R. § 1601.14(a)

The above statutes and regulations are set out verbatim in the Petitioner's petition or appendix,

except for 42 U.S.C. § 12117(a), 29 C.F.R. § 1601.7 and 29 C.F.R. § 1601.14, which state:

> *42 U.S.C. § 12117. Enforcement*
>
> (a) Powers, remedies, and procedures. The powers, remedies, and procedures set forth in sections 705, 706, 707, 709, and 710 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4, 2000e-5, 2000e-6, 2000e-8, and 2000e-9) shall be the powers, remedies, and procedures this title provides to the Commission, to the Attorney General, or to any person alleging discrimination on the basis of disability in violation of any provision of this Act, or regulations promulgated under section 106 [42 U.S.C. § 12116], concerning employment.
>
> *29 C.F.R. § 1601.7 Charges by or on behalf of persons claiming to be aggrieved.*
>
> (a) A charge that any person has engaged in or is engaging in an unlawful employment practice within the meaning of [T]itle VII or the ADA may be made by or on behalf of any person claiming to be aggrieved. A charge on behalf of a person claiming to be aggrieved may be made by any person, agency, or organization. The written charge need not identify by name the person on whose behalf it is made. The person making the charge, however, must provide the Commission with the name, address and telephone number of the person on whose behalf the charge is made. During the Commission investigation, Commission personnel shall verify the

authorization of such charge by the person on whose behalf the charge is made. Any such person may request that the Commission shall keep his or her identity confidential. However, such request for confidentiality shall not prevent the Commission from disclosing the identity to Federal, State or local agencies that have agreed to keep such information confidential. If this condition is violated by a recipient agency, the Commission may decline to honor subsequent requests for such information.

29 C.F.R. § 1601.14 Service of charge or notice of charge.

(a) Within ten days after the filing of a charge in the appropriate Commission office, the Commission shall serve respondent a copy of the charge, by mail or in person, except when it is determined that providing a copy of the charge would impede the law enforcement functions of the Commission. Where a copy of the charge is not provided, the respondent will be served with a notice of the charge within ten days after the filing of the charge. The notice shall include the date, place and circumstances of the alleged unlawful employment practice. Where appropriate, the notice may include the identity of the person or organization filing the charge.

STATEMENT OF THE CASE

This is an employment discrimination lawsuit between the Petitioner, Hugh T. Butler, Sr. ("Butler"), and the Respondent, Greif, Inc. ("Greif" or "the Company").[1] Before filing this suit, Butler's counsel submitted, on Butler's behalf, a charge of discrimination to the U.S. Equal Employment Opportunity Commission ("EEOC") on February 20, 2007.[2] In the charge, Butler (through his counsel) alleged that Greif unlawfully discriminated and retaliated against him by terminating him from employment on August 31, 2006.[3]

Although the EEOC charge was signed by Butler's counsel, it was not verified.[4] In fact, as Butler admits, the charge was never verified during the time period when it was pending before the EEOC.[5]

On May 22, 2007, the EEOC issued a "Dismissal and Notice of Rights" to Butler.[6] In that document, the EEOC stated that it was dismissing the charge because of a failure to cooperate by Butler.[7]

---

[1] Petitioner's Appendix ("App.") at 2.

[2] App. at 2, 46-50.

[3] App. at 46-50.

[4] *Id.*

[5] Butler's petition at 3, 6-7.

[6] App. at 43-46.

[7] App. at 44.

After receiving the EEOC's "Dismissal and Notice of Rights," Butler filed this lawsuit – in which he claims only unlawful retaliation in violation of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12203 – against Greif in the U.S. District Court for the Northern District of Georgia on August 17, 2007.[8] On March 13, 2008, the Company filed a motion for summary judgment, asserting that Butler could not sustain his lawsuit because he had failed to submit a *verified* charge to the EEOC prior to filing suit.[9]

Butler filed an opposition to the summary judgment motion.[10] In addition to the opposition, Butler (through his counsel) submitted a verification to the EEOC on or around March 25, 2008.[11] But that verification was submitted to the EEOC almost one year after the EEOC had issued its "Dismissal and Notice of Rights" and had closed its investigation.[12] And there is no evidence in the record that the EEOC did anything with the verification, other than simply stamp it as "RECEIVED."[13]

On September 26, 2008, the District Court granted Greif's motion for summary judgment and

---

[8] App. at 5, 8.

[9] App. at 9.

[10] *Id.*

[11] App. at 9, 51-54.

[12] *Compare* App. at 43-46 *with* App. at 51-54.

[13] App. at 51-54.

entered judgment in the Company's favor.[14] Butler then filed an appeal to the U.S. Court of Appeals for the Eleventh Circuit ("the Eleventh Circuit") on October 24, 2008.[15]

On April 8, 2009, the Eleventh Circuit unanimously affirmed the District Court's summary judgment award.[16] Butler then filed the petition at issue with this Court on July 7, 2009.[17]

ARGUMENT

The Eleventh Circuit correctly ruled, as did the District Court, that Butler could not sustain his lawsuit because his underlying EEOC charge was *not verified*, as required by *statute*.

I. EEOC Charge Must Be Verified

With respect to the administrative prerequisites to filing a lawsuit, the ADA follows the procedural mechanisms of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e *et seq*. *See* 42 U.S.C. § 12117(a). Under Title VII, a plaintiff must first file a charge with the EEOC before filing a claim in court. 42 U.S.C. § 2000e-5(e)(1). The charge does

[14] App. at 5-18.

[15] Rec. Vol. 1, Doc. 27.

[16] App. at 1-5.

[17] Butler's petition.

not need to be filed by the complainant himself but can be filed by someone else "on behalf of [the] person claiming to be aggrieved," *id.* § 2000e-5(b), meaning that, for example, an attorney can submit a charge for his or her client. However, no matter who files the charge, Title VII explicitly states that the charge "*shall* be in writing *under oath or affirmation*. . . ." *Id.* (emphasis added).

In addition to the above *statutory* requirement that a charge *must* be verified, the EEOC has issued regulations on the form of charges and what they *must* contain. *See* 29 C.F.R. § 1601.1 *et seq.* One of the regulations states unambiguously that a charge "shall be in writing and signed and *shall be verified*." 29 C.F.R. § 1601.9 (emphasis added).

II. Butler's EEOC Charge Not Verified

Neither Butler nor his counsel submitted a verified charge to the EEOC before filing this action in court. Based on that undisputed fact, the District Court correctly granted – and the Eleventh Circuit correctly affirmed (unanimously) – summary judgment in favor of Greif.

III. Butler's Belated Verification Fails

Butler argues that his belated verification – submitted to the EEOC almost a full year after that agency had dismissed his charge and closed its investigation – should "relate back" to the date when

he filed his charge, the effect being that his lawsuit would be revived. Butler's argument should be rejected, and his petition should be denied, for four main reasons.

A. Case Law Supports Greif

Several courts have held or said that a person's opportunity to verify his charge *ends* when the EEOC dismisses the charge. *See Balazs v. Liebenthal*, 32 F.3d 151, 156-57 (4th Cir. 1994); *Reynolds v. Solectron Global Servs.*, 358 F. Supp. 2d 688, 693 n.9 (W.D. Tenn. 2005); *Hazeur v. Federal Warranty Serv. Corp.*, No. Civ.A. 99-3156, 2000 WL 365013, at *2 (E.D. La. Apr. 7, 2000); *Danley v. Book-of-the-Month Club, Inc.*, 921 F. Supp. 1352, 1353-55 (M.D. Pa. 1996), *aff'd*, 107 F.3d 861 (3d Cir. 1997) (table) (No. 96-7302); *Bacon v. Allstate Ins. Co.*, No. 93 C 1701, 1995 WL 360736, at *3-*8 (N.D. Ill. June 14, 1995).

If the verification from Butler's counsel had been submitted to the EEOC *prior to* the EEOC's dismissal of the charge on May 22, 2007, then Butler's "relation back" argument would have winning traction under *Edelman v. Lynchburg College*, 535 U.S. 106 (2002). But Butler submitted his verification to the EEOC *more than 10 months after the EEOC's dismissal of the charge*. As explained in the rulings cited in the preceding paragraph, Butler's opportunity to verify his charge *ended* when the EEOC dismissed his charge and closed its investigation.

Balazs involves strikingly similar facts to the instant case and was relied on by both the Eleventh Circuit and District Court below. (*See* App. at 4, 14-16.) It is quoted in substantial part as follows:

> . . . [T]here is presented squarely for decision here the question of whether the attempted amendment of plaintiff's March 30, 1993 charge sufficed to perfect it and support the maintenance of this action notwithstanding the attempted amendment was not filed until almost four months after the EEOC had issued plaintiff its right to sue letter, had terminated its processing of the charge, this action has been instituted and defendants had filed and served plaintiff with a motion to dismiss based on the non-verification of the EEOC charge.
>
> * * *
>
> . . . Plaintiff . . . relies principally on an EEOC regulation, 29 C.F.R. § 1601.12(b) (1988). He argues that the charge filed by him on March 30, 1993 was timely amended, that the amendment related back to the filing of the charge and that the district court's ruling to the contrary was clearly erroneous. The cited regulation states:
>
> > A charge may be amended to cure technical defects or omissions, including the failure to verify the charge. . . . Such amendments . . . will relate back to the date the charge was first received.

> . . . Although [this] regulation has heretofore been applied in many cases, not one of them involved a situation where, as here, the attempted amendment followed the issuance of a right to sue letter and the institution of suit.
>
> Plaintiff and the EEOC agree that the purpose of verification is to protect the employer from having to respond to frivolous charges, but that protection is lost once the right to sue letter issues and the employer is served with a lawsuit. At that point the employer's only choice is to defend the suit even if it is, as appears to be the case here, based at least in part on a charge not covered by Title VII. Carried to its logical conclusion, under the EEOC's interpretation of its regulation it would never be too late to verify a charge, and if this case had gone to trial and had resulted in a judgment from which appeal was taken, plaintiff's verification of his charge would have been timely if made while the case was pending in this [appeals] court.
>
> Such an absurd result was surely not what Congress had in mind when it enacted the statute nor what the EEOC had in mind when it adopted the regulation allowing a verification amendment to relate back to the time the charge was filed.
>
> Thus we conclude that a reasonable construction of the EEOC's regulation would simply allow charges to be verified and to

> relate back *only so long as the charge is a viable one in the EEOC's files, but that where, as here, a right to sue letter has issued, a suit has been instituted and the EEOC has closed its file, there is no longer a charge pending before the EEOC which is capable of being amended.* This construction of the regulation imparts certainty to the proceeding which is helpful to the parties and the court, and at the same time it complies with the statutory requirement of verification without undermining the EEOC regulation.

Balazs, 32 F.3d at 156-57 (emphasis added).

Here, the Eleventh Circuit correctly relied on the reasoning in *Balazs*, particularly in light of the fact that when the EEOC dismissed Butler's charge on May 22, 2007, it did so with this finding: "Having been given 30 days in which to respond, you failed to provide information, failed to appear or be available for interviews/conferences, or otherwise failed to cooperate to the extent that it was not possible to resolve your charge." (App. at 43-46.) *That reason for dismissal goes hand-in-glove with Butler's failure to submit a verified charge to the EEOC.*[18] All told, between the date when Butler's charge was filed

---

[18] *Cf. Edelman*, 535 U.S. at 115 n.9 ("[O]ur understanding is that the EEOC's standard practice is to caution complainants that if they fail to follow up on their initial unverified charge, the EEOC will not proceed further with the complaint.") (citing an *Amici Curiae* brief by the EEOC) (other citation omitted).

(February 22, 2007) and the date when the EEOC dismissed it (May 22, 2007), Butler had three months – *more than ample time* – to submit a verification but failed to do so. Accordingly, Butler's petition to this Court should be rejected.[19]

B. No Circuit Split

The question presented by Butler in his petition has been squarely decided by the Fourth (*Balazs*) and Eleventh (the instant case) circuits. Looking and hoping for a circuit split, Butler cites to *Choate v. Caterpillar Tractor Co.*, 402 F.2d 357 (7th Cir. 1968), *McWilliams v. Latah Sanitation, Inc.*, No. 04-35387, 149 Fed. Appx. 588 (9th Cir. 2005), and *Buck v. Hampton Township Sch. Dist.*, 452 F.3d 256 (3d Cir. 2006). (Butler's petition at 15-16, 20.) However, each of those cases is deficient in its own unique way with respect to Butler's effort to show a circuit split.

---

[19] Notably, when Butler submitted the belated verification to the EEOC, there is nothing in the record to show that the EEOC did anything other than simply stamp it as "RECEIVED." It is *not* as if the EEOC re-opened the charge or issued a written communication stating that the verification related back to the date when the charge was filed. With the record showing only receipt by the EEOC, this Court is not faced with a scenario where the EEOC took affirmative action in an effort to effect the relation back of the verification (an effort that, Greif contends, would involve an unreasonable interpretation and abusive application of 29 C.F.R. § 1601.12(b)). The EEOC's *inaction* in this regard buttresses the Eleventh Circuit's decision and undercuts Butler's petition.

In *Choate*, the plaintiff filed an EEOC charge on March 14, 1966, and then put her charge under oath on June 27, 1966 – *before* the EEOC issued its dismissal letter on October 5, 1966. *Choate*, 402 F.2d at 358-61. So *Choate* did not involve, or address, the precise issue in this case: a plaintiff who puts his charge under oath *after* the EEOC dismisses the charge and closes its investigation.

As for *McWilliams*, it was – and is – an *unpublished* memorandum opinion that states at the outset: "This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3[20]." *McWilliams*, 149 Fed. Appx. at 589. In light of that fact, a Montana state court recognized, "*McWilliams* is not properly cited by Ninth Circuit rule and as such is not binding on Montana courts." *Wiman v. Fallon County*, Docket No. DV 2004-08, 2006 Mont. Dist. LEXIS 974, at *2 (Mont. Dist. Ct. June 22, 2006). Notably, *Wiman* seems to be the only court decision to have cited *McWilliams*, the latter of which was decided in 2005 – *before* Federal Rule of Appellate Procedure 32.1 was enacted in 2006 to provide that a court may not prohibit or restrict the citation of unpublished federal judicial opinions issued on or after January 1, 2007 (*i.e.*, *after* the *McWilliams* opinion was issued).

---

[20] That rule limits or restricts the usage (citation) and value (weight) of unpublished opinions.

Finally, with regard to *Buck*, it comes from the same circuit (the Third Circuit) as *Danley*. In *Danley*, a federal district court in Pennsylvania specifically "h[e]ld that a private litigant cannot maintain a Title VII claim where his or her EEOC charge was not verified prior to the EEOC's issuance of a right to sue letter. When the EEOC has issued its right to sue letter and closed its file, it is not possible for a plaintiff to verify a previously unsworn charge." *Danley*, 921 F. Supp. at 1354. On appeal, the Third Circuit *affirmed* that decision (without an opinion) – *almost a decade before Buck*. *Danley*, 107 F.3d 861 (3d Cir. 1997) (table) (No. 96-7302). The Third Circuit, therefore, is not clearly in conflict with the Fourth and Eleventh circuits.

Buck also, importantly, is rooted in particular facts that have not been developed by Butler and that, thus, are not before this Court. Whereas in *Buck* there existed record evidence showing how the employer responded to the EEOC charge by "fil[ing] a lengthy and detailed response on the merits, without mentioning the plaintiff's failure to verify the charge, all *before* the EEOC issued its [dismissal and] right to sue letter," *Buck*, 452 F.3d at 262-65 (emphasis in original), no similar evidence was put in the record by Butler. Even if it had been, this Court should note that, from an equity standpoint, Butler was represented by counsel *before and during* the EEOC proceeding (*see* App. at 46-50) and, as discussed in the next subsection below, had previously filed a charge with the EEOC. Those two facts mean that Butler

was neither a lay complainant nor a novice at the EEOC stage.

In sum, there is no circuit split, or no circuit split of significance, that warrants the granting of Butler's petition based on the particular fact pattern and equity-related evidence in the record.

C. Butler Not Being Denied 'Day in Court'

To the extent that equity considerations come into play, this Court should note that its rejection of Butler's petition would not result in his being denied "his day in court," for two different reasons.

First, Butler has already had his day in court against Greif. As he acknowledges on pages 4-5 of his petition, he previously sued Greif (after filing a *verified* EEOC charge), went to trial, and lost. The record from that case – Civil Action No. 1:04-CV-3502-ODE in the U.S. District Court for the Northern District of Georgia – shows that the Company: reasonably accommodated Butler by placing him on a leave of absence (as opposed to terminating him) after his physician *completely restricted* him from performing an *essential function of his job* (bending); prevailed on summary judgment on all but one of the multiple federal- and state-law claims that Butler asserted in his lawsuit; obtained a judgment as a matter of law at trial on the one claim that survived summary judgment; and won on appeal to the Eleventh Circuit. The instant case – Butler's second

suit against Greif – derives from the Company's decision to separate Butler from employment after its victory at trial. That decision, as recognized (or hinted at) by Butler on pages 5-6 of his petition, was based on terms of nothing more neutral, legitimate, non-discriminatory and non-retaliatory than a *collective bargaining agreement* (Butler was on a leave of absence for so long – more than two years – that he lost his seniority and employment rights under the collective bargaining agreement between the Company and the union that represented a unit of employees, including Butler, at the Company's facility). (*See* Greif's Eleventh Circuit brief at 22-23.)

The second reason why Butler is not being unfairly denied his day in court is that he had more than ample opportunity to file a verified EEOC charge. Butler was separated from employment – and notified of his separation by mail – on August 31, 2006 (*see* App. at 49-50); yet he waited (most unnecessarily) more than five months to submit a charge to the EEOC. As the EEOC did not dismiss his charge until May 22, 2007, Butler had more than eight months (from the job action at issue to the EEOC's dismissal) to submit a verified charge to the EEOC. Also, in the wake of the EEOC's dismissal *for failure to cooperate*, Butler or his counsel could have tried to take steps to see *why* the charge was dismissed (if they really did not know the reason) so that they could rectify any shortcomings on their part. However, there is no record evidence that the EEOC re-opened the charge or reconsidered its

dismissal based on some effort or explanation by Butler or his counsel. What is clear, then, is that Butler either slept on his rights, so to speak, or disregarded them. Although he now seeks to be rescued from the fate that he ordained by his inaction, he presents neither a compelling legal nor equitable case for this Court to consider.

D. No Important Question of Federal Law

The question presented does not qualify as an important question of federal law. The general circumstance at hand (a complainant's failure to verify his EEOC charge before the EEOC dismisses the charge and closes its investigation) is rare. Even if this rare circumstance could be deemed important to some degree, that importance is diluted when the particular facts in the record here are considered (*e.g.*, the fact that Butler had previously filed a verified charge as a prerequisite to a prior suit, the fact that Butler was represented by counsel before and during the EEOC phase leading up to this suit).

CONCLUSION

Butler's petition for a writ of certiorari should be denied because the Eleventh Circuit correctly decided that his verification to the EEOC – which he submitted almost a year after that agency had dismissed his charge – was insufficient. Butler's petition also should be denied because this case does not involve

an important question of federal law, and there is no circuit split of significance based on the particular facts that are, and are not, in the record here.

Respectfully submitted,

BENJAMIN H. BANTA
Counsel of Record

and

ERNEST R. MALONE, JR.
THE KULLMAN FIRM, P.L.C.
1100 Poydras Street, Suite 1600
New Orleans, LA 70163
Telephone: (504) 524-4162
Facsimile: (504) 596-4189
E-Mail: bhb@kullmanlaw.com
E-Mail: erm@kullmanlaw.com